**Case No. _____**

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE TENTH CIRCUIT**

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|---|---|---|
| **UNITED STATES OF AMERICA,** | ) | |
| | ) | |
| **Respondent/Appellee,** | ) | **DEATH PENALTY CASE** |
| | ) | ***Execution Date Set For*** |
| **v.** | ) | ***June 11, 2001, at 7:00 a.m.*** |
| | ) | |
| **TIMOTHY JAMES MCVEIGH,** | ) | |
| | ) | |
| **Movant/Appellant.** | ) | |

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLORADO**

**THE HONORABLE RICHARD P. MATSCH**
**DISTRICT JUDGE**
**Criminal Action NO. 96-CR-68-M**

# APPELLANT'S BRIEF IN SUPPORT OF EMERGENCY APPLICATION FOR STAY OF EXECUTION

***Oral Argument is Requested***

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## INTRODUCTION

This case tests us as people and as officers in a system bound to the ideals of justice. It is extremely hard not to be improperly influenced by the immense suffering and agony at the heart of this case. Being able to recognize and act upon the elemental demands of fairness in this case requires each of us to summon up the best in us.

We believe, as we argue below, that the District Court succumbed to the human tragedy of this case and lost sight of the demands of fairness. We pray that this Court not do the same.

As the Supreme Court emphasized in *Gardner v. Florida*, 430 U.S. 349, 357-358 (1977), "From the point of view of society, the action of the sovereign in taking the life of one of its citizens … differs dramatically from any other legitimate state action. It is of vital importance to the defendant and to the community that any decision to impose the death sentence be, and appear to be, based on reason rather than caprice or emotion."

We urge this Court to be guided by this principle.

## RELEVANT PROCEDURAL HISTORY

As this Court knows, on May 31, 2001, Mr. McVeigh filed an application for a stay of execution in the District Court for the District of Colorado. He argued that he needed a stay of his June 11, 2001 execution to enable him to do the following:

1. Further investigate, through the tools of civil discovery, the reasons the FBI failed to produce numerous documents until May 9, 2001, some of which would have been helpful to the defense;

2. Further investigate whether the FBI was still withholding investigative documents which would have been helpful to the defense; and

3. To then be allowed to file a fully informed motion to vacate the District Court's decision denying his motion for post-conviction relief pursuant to 28 U.S.C. § 2255 because that decision was procured by a fraud on the court -- the FBI's scheme to suppress evidence of other identified persons' role in and responsibility for the bombing of the Murrah Building.

On June 6, 2001, following oral argument, the District Court denied Mr. McVeigh's request for a stay of execution. In doing so, the court presumed that Mr. McVeigh had a right to file a motion to vacate the 2255 decision based on fraud on the court. It did not decide, based on the preliminary showing of fraud Mr. McVeigh was able to make, that Mr. McVeigh could not make a showing sufficient to establish a fraud on the court. Rather, the court decided that, even if Mr. McVeigh succeeded in vacating the decision in his 2255 application and amending it to include new *Brady* claims, he could not possibly succeed on those claims because he could not show the required degree of prejudice. On that basis, the court denied the request for a stay of execution.

## SUMMARY OF ARGUMENT

The District Court erred. As we show herein, if we were allowed to conduct the complete investigation called for by the FBI's eleventh hour production of documents, it is reasonably likely, given what is now known, that we would be able to show that the FBI suppressed credible evidence that other people played a significant role in the bombing, and that the jury's assessment of Mr. McVeigh's role in and moral culpability for the bombing might well have changed had this evidence been presented. This would establish both a fraud on the Court, allowing the 2255 motion to be re-opened, and a meritorious claim for relief from the death sentence.

## THE DISTRICT COURT'S DECISION

The District Court presumed the availability of a fraud on the court proceeding to a federal prisoner seeking to vacate a decision denying a 2255 motion, and proceeded to frame the question that should have governed the court's decision:

> While there is some doubt about the applicability of the civil rules to a motion in a criminal proceeding, I have assumed the -- that Rule 60(b) could be applied. The critical question, then, is this: Has the defendant presented a reasonable basis for a belief that given time to pursue the matter counsel contends in good faith supports a claim of fraud on the Court [counsel will be able to demonstrate a fraud on the court]?

Oral Order Denying Stay of Execution (hereafter referred to as "Order"), June 6, 2001, at 5 (line 20) - 6 (line 1).[1]

The court never addressed the question it characterized as critical. Instead it changed the focus of the inquiry:

> If this court were to vacate or modify the order denying relief under Section 2255 and permit an amendment of that motion to expand the Brady contention, the question then becomes what relief could be provided.

Order, at 7 (lines 5-8).

The court then undertook an analysis of whether the evidence Mr. McVeigh's attorneys anticipated finding was evidence that could support relief under *Brady v. Maryland*, 373 U.S. 83 (1963). Order, at 7 (line 13) - 9 (line 7). After noting the materiality standard under *Brady* – "if the disclosure had been made before trial, a different outcome could be expected," Order, at 7 (lines 10-12) – the court accurately characterized the exculpatory evidence Mr. McVeigh's counsel expected to find: "The thrust of defendants position here is that there may be some basis for showing that others may have been involved." Order, at 7 (lines 23-25). The court then examined the effect of such evidence on the verdicts that Mr. McVeigh was guilty of all charges, Order, at 7 (line 18) - 8 (line 17),

[1]The bracketed material at the end of this quote fills out what counsel believe the court intended to say. Without the addition of this material, the sentence is incomplete.

and found that evidence of others' involvement "does not mitigate or affect those charges...." Order, at 8 (lines 13-14).

Then the court examined the effect that evidence of others' involvement would have had on the sentence. Order, at 8 (lines 18-19). To measure materiality or prejudice on this question, the court applied the pre-AEDPA requirement for gaining a decision on the merits of a sentencing issue in a successive federal habeas petition, set forth in *Sawyer v. Whitley*, 505 U.S. 333, 348 (1992): whether "the defendant showed by clear and convincing evidence that but for constitutional error at his sentencing hearing, no reasonable juror would have found him eligible for the death penalty under applicable state law." Order, at 8 (lines 20-24). Under this standard, the court then held that Mr. McVeigh's anticipated evidence of others' involvement in the bombing would fail to establish prejudice:

> Now, assuming that that ruling [*Sawyer*] has not been affected by the enactment of the AEDPA, ... it has no evidentiary support in this case. The argument of defendant's counsel that the jury may not have found the death penalty was justified if the defense had been able to implicate additional perpetrators is just not tenable.

Order, at 9 (lines 1-7).

In the remainder of its order, the court expressed some views about Mr. McVeigh's preliminary showing of fraud on the court, but did not decide that the showing was inadequate to warrant a stay of execution. For example, the court noted that

> I've looked at what has been submitted here as a showing or a presumed showing that there was some fraud upon the Court by the failure of the Federal Bureau of Investigation to produce documents that were clearly within the scope of the discovery agreement and that they -- there is no suggestion that prosecuting counsel was aware prior to this May.
>
> It has been argued forcefully here by Mr. Nigh that this calls into question the integrity of the process and that this court has a responsibility to protect that integrity. But I think there has to be a drawn a distinction between the integrity of the Federal Bureau of Investigation and the integrity of the adjudicative process leading to the -- to these verdicts and recommendation. They are quite different things.

Order, at 11 (lines 3-17). The court further characterized its impressions of the fraud on the court evidence as follows:

> Now, I do not doubt that there may be as a result of the requested evidentiary hearing evidence presented of negligence, lack of coordination, lack of organization in the collection and maintaining of the materials. But it has to also be viewed in the context of the massive investigation was undertaken here and the speed with which it was done.
>
> There seems in my review of what's been submitted here no pattern of what was not disclosed that would suggest a scheme to keep away from the defense what they needed for trial, including the sentence hearing. I don't see that.

Order, at 13 (lines 10-19).

Despite its view that the showing thus far made by Mr. McVeigh did not appear to point to a deliberate scheme by the FBI to deceive, the court did not venture an opinion as to whether there were enough questions raised by the evidence to warrant a stay and further

investigation.[2] Instead, the court clearly rested its decision on the view that nothing concerning the participation of others could have changed the sentencing decision for Mr. McVeigh:

> Whatever may in time being [sic] disclosed about possible involvement of others in this bombing, it will not change the fact that Timothy McVeigh was the instrument of death and destruction. For that, he was sentenced to death by lethal injection; and I find that there is no good cause to delay the execution of that sentence.

Order, at 15 (lines 13-18).

## ARGUMENT

### I. This Court Has the Power to, and Should, Grant a Stay of Execution.

The basis for our stay request in the District Court was that we needed additional time to investigate before we could file a fraud on the court motion, and that the All Writs Act, 28 U.S.C. § 1651 (a), recognized the court's inherent power to grant a stay in such circumstances. The All Writs Act, providing that the federal courts "may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law," clearly permits this court to grant a stay as well.

We are appealing from the denial of a stay of execution that is necessary to permit the filing of a fraud upon the court motion in the District Court concerning its order denying

[2] It is important to note that Mr. McVeigh's counsel has had less than 3 weeks to read over 4000 pages of material, videos and tapes, to investigate the new evidence and file a motion for stay.

Mr. McVeigh's 2255 motion. If our appeal is sustained, Mr. McVeigh will be entitled to return to the District Court to file his fraud on the court motion. A stay of execution is clearly "necessary or appropriate" to maintain the status quo to enable Mr. McVeigh to file that motion.

## II. The District Court Erred in Holding that No Evidence Could Change the Outcome of Mr. McVeigh's Sentencing Verdict.

### A. In measuring the materiality of the suppressed evidence in relation to the sentencing decision, the Court applied the wrong legal standard.

In determining that no evidence of others' involvement in the bombing would have made a difference in the sentencing decision, the District Court employed the wrong legal standard. The standard for prejudice or "materiality" for a *Brady* claim is whether "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *United States v. Bagley*, 473 U.S. 667, 676 (1985). Rather than using this standard, the court used the far more restrictive standard of *Sawyer v. Whitley*, 505 U.S. 333, 348 (1992): whether "the defendant showed by clear and convincing evidence that but for constitutional error at his sentencing hearing, no reasonable juror would have found him eligible for the death penalty under applicable state law." Order, at 8 (lines 20-24).

There was no reason to employ the *Sawyer* standard. That standard was articulated prior to the AEDPA, when successive habeas petitions raising sentencing claims could be

brought. The standard was an effort to restrict the pleading of sentencing claims in successive petitions. The AEDPA displaced *Sawyer* when it precluded altogether the raising of sentencing claims in successive petitions, unless such claims were based on a change in law made retroactive by the Supreme Court. *See* 28 U.S.C. §§ 2244(b) and 2255 (second (1) and (2)). The use of this standard, rather than the standard articulated in *Bagley*, was clear error.

### B. Under the *Bagley* materiality standard, Mr. McVeigh may be able to present facts that could have called for a life sentence.

In its decision denying the application for stay of execution, the District Court held:

> The argument of defendant's counsel that they jury may not have found the death penalty was justified if the defense had been able to implicate additional perpetrators is just not tenable.

Order, at 9 (lines 4-7).

Not only was such an argument tenable, it is firmly supported by the law concerning evidence relevant to the death penalty determination.

In *Chaney v. Brown*, 730 F.2d 1334 (10th Cir.), *cert. denied*, 469 U.S. 1090 (1984), this Court detailed why evidence concerning additional perpetrators must be considered by the jury. In *Chaney* the defendant had been convicted of murder in the first degree and sentenced to death in the District Court of Tulsa County, Oklahoma. In granting Chaney's petition for writ of habeas corpus, the Court held that the prosecution had violated *Brady* by withholding evidence which might have affected the sentence. Like Mr. McVeigh, Chaney had made pretrial requests

for any and all statements made by witnesses or potential witnesses to agents of the state or federal government. The Court determined that under the materiality inquiry then in effect under *United States v. Agurs*, 427 U.S. 97 (1976), the defendant had made a specific request for exculpatory evidence. *Chaney*, 730 F.2d at 1344.

In *Chaney*, the withheld evidence included four FBI 302's which detailed witness statements. Those statements raised questions concerning the location of the defendant at the time the murder was committed and whether he had acted alone. Some of the statements were simply inconsistent with the state's theory of the case and the timing of events. This Court granted a stay of execution and remanded the case for a new sentencing proceeding. The Court determined that the withheld evidence was favorable to the defendant and may have affected the decision to impose the death penalty. The Court stated:

> The Eighth and Fourteenth Amendments require that the sentencer ... not be precluded from considering as a mitigating factor, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death....
>
> First, the evidence withheld here is mitigating evidence because it relates to the circumstances of the offense as a whole, and tends to support inferences that others were involved in the criminal episode, that Chaney may not have personally killed the victims, and that he may not have been present when they were killed. *See Blankenship v. State*, 251 Ga. 621, 308 S.E.2d 369, 371 (1983) (*Lockett* and *Eddings* require that defendant be allowed to offer as mitigating evidence in sentencing phase, testimony that a third person was involved in murder, rape and aggravated sodomy). Chaney was unable to offer such evidence in mitigation at the

> punishment phase of his trial because the prosecutor withheld the F.B.I. reports.

*Id*. at 1351 and 1352. (emphasis supplied). The Court in *Chaney* made these findings even though one of the witnesses whose statement had been withheld indicated that she would be unable to testify with certainty about events which might be helpful to the defendant. The Court explained that the F.B.I. report itself would have been admissible at the penalty phase of the case. Another statement was simply indicative that there was "another possible participant in the criminal venture". *Id*. at 1355. Finally, in granting relief the Court stated:

> Thus, we have a documentary record presented of the F.B.I. reports which were themselves admissible. From that documentary record, considered with the state trial record, we are convinced that the withheld reports "might have affected" the jurors, or at least one of them, in their determination on the death penalty. We do not know what the witnesses might have said at the trial in September, 1977, but we do know the contents of their statements as made to the F.B.I. within a few days after the events and promptly recorded. Even with changes in their recollection that testimony by these witnesses could make, we must hold that the withheld evidence might have affected the jurors' determinations on the death penalty. This being our conclusion in light of the undisputed documentary record, we are not persuaded that a further evidentiary hearing is required.

*Id*. at 1358. (emphasis supplied).

On direct appeal in Mr. McVeigh's case, this Court recognized the type of evidence we submit was withheld (evidence of participation by others) must be considered by the sentencing jury. The Court considered whether the evidence proffered, participation by Dennis Mahon and

Andreas Strassmeir, could be properly classified as a mitigating factor. The Court recognized that Mr. McVeigh could not meet the elements of the explicit statutory mitigating factor of "minor participation", 18 U.S.C. § 3592(a)(3). Even so, the Court held evidence of a lesser role, if it could be connected to the offense, must be considered as a mitigating factor:

> It has been the law of the land for more than twenty years that a capital defendant is constitutionally entitled to present any aspect of his character, record, or offense in mitigation of his culpability for the crime. In *Woodson v. North Carolina*, a controlling plurality of the Supreme Court held that "in capital cases the fundamental respect to humanity underlying the Eighth Amendment requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death." *Woodson v. North Carolina*, 428 U.S. 280, 304, 96 S.Ct. 2978, 49 L.Ed.2d 944 (1976) (plurality opinion) (citation omitted). Another plurality of the Court reiterated this view in *Lockett*, holding that "the Eighth and Fourteenth Amendments require that the sentencer, in all but the rarest kind of capital case, not be precluded from considering, as a mitigating factor, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." *Lockett*, 438 U.S. at 604, 98 S.Ct. 2954. And finally, in *Hitchcock v. Dugger*, 481 U.S. 393, 398-99, 107 S.Ct. 1821, 95 L.Ed.2d 347 (1987), a unanimous Court held that its prior case law renders unconstitutional any death penalty procedure that prevents a capital sentencer from considering nonstatutory mitigating factors.
>
> Congress recognized the import of this case law when it drafted the Federal Death Penalty Act, including the catch-all mitigating category under § 3592(a)(8). Any contention that the "minor participation" mitigating factor in § 3592(a)(3) precludes a mitigation claim based on evidence of a "lesser role" in the offense ignores the plain language of § 3592(a)(8). Any other conclusion

> would run afoul of the precept in *Lockett* that a capital defendant is constitutionally entitled to offer in mitigation any aspect of his character, record, or offense. *See Lockett*, 438 U.S. at 604, 98 S.Ct. 2954.

*U.S. v. McVeigh*, 153 F.3d 1166, 1211 (10th Cir. 1998), *cert. denied* 526 U.S. 1007 (1999).

On direct appeal the Court held Carol Howe's testimony was properly excluded at the penalty phase because Mr. McVeigh could not "connect it up". That is to say he could not demonstrate a connection between the suspects at Elohim City and the bombing. *Id*. at 1212 and 1213. The evidence withheld by the government until now included precisely the type of information that may have allowed Mr. McVeigh to establish a connection. An FBI "insert" report generated on March 13, 1997 indicated that a former member of the "Arizona Patriots" purported to have knowledge of the participants in the bombing including those from Elohim City. He also indicated an informant had warned the ATF three weeks prior to the bombing. The source who provided information to the FBI believed Carol Howe was the informant. (Please see Exhibit "9" to the Separately Bound Exhibits to the Petition for Stay of Execution, filed under seal in the District Court).

In addition, an entirely different witness provided information on April 19, 1995 that Dennis Mahon was a participant in the bombing. (Exhibit "10"). Whether investigation concerning this witness and his basis for knowledge would have allowed the defense to establish the relevance of the Carol Howe testimony, we do not know. We were not given this exculpatory evidence in sufficient time to make fair use of it. There was also evidence,

withheld by the government, that another person could well have been the mastermind behind the bombing (Exhibits 16 and 17).

The district court's indication that conviction on the murder counts negated Mr. McVeigh's argument that participation by others would be mitigating, ignores the Supreme Court's ruling in *Brady v. Maryland,* 373 U.S. 83 (1963) itself. In *Brady* the defendant had been convicted of capital murder and sentenced to death. The Supreme Court held that even though Brady's conviction could not be set aside, (he had confessed to participation) his sentence could not be upheld, because the prosecution withheld the confession of the codefendant that he had committed the "actual homicide". The Supreme Court stated:

> We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution."

*Id*. at 86.

Mr. McVeigh, like Brady does not claim that the withheld evidence could change the guilty verdicts for murder. He does claim, like Brady, that he was denied due process when the prosecution withheld evidence concerning participation by others.

### C. Mr. McVeigh's knowledge of others' involvement in the bombing would not necessarily defeat a *Brady* claim.

In *dicta*, the District Court noted that Mr. McVeigh should have known whether any other people were involved in the bombing. It did not rest any aspect of its holding on this matter, but it did note the following:

> The defendant, as I said in colloquy with Counsel, Mr. Burr, must have knowledge of this fact: whether others were involved with him. And if that be the case, he had the opportunity to present evidence within his own knowledge at a sentence hearing.
>
> Mr. Burr, in response to questions I put, suggested that there may be reasons why Mr. McVeigh would not share that knowledge with his lawyers. I cannot accept that.

Order, at 9 (lines 8-15).

If there were others involved, clearly Mr. McVeigh must have known who some of them were, but he may not have known who all of them were. Order, at 9 (lines 16-17). Mr. McVeigh's willingness to disclose this information to counsel, however, could well have been influenced by the revelation of the material suppressed until recently by the FBI or the eventual revelation of material still being suppressed by the FBI. The reasons not to disclose such information to one's attorney may disappear if the government already knows who else was involved. Moreover, the information presented by the defense to the District Court suggested that one of the other participants in the bombing was an informant for federal law enforcement officers. If this information turns out to be accurate, it is information that Mr. McVeigh would not have known.

If the resolution of Mr. McVeigh's stay request in any manner turns upon whether his knowledge of co-participants relieved the government of its *Brady* obligations, a stay should be granted for this reason alone. It is a question that the Supreme Court has noted but not yet decided, *see Strickler v. Green*, 527 U.S. 263, 288 n.33 (1999), and it needs to be briefed thoroughly.

### III. Mr. McVeigh Proffered Sufficient Information Showing a Fraud Upon the Court to Warrant a Stay of Execution.

Mr. McVeigh demonstrated prima facie evidence of a fraud upon the Court with reference to six key points:

(1) Former FBI Agent Dan Vogel, a spokesman for the Oklahoma City field office of the FBI during the bombing case, has indicated publicly that he does not believe the explanation -- inadvertence -- provided by the FBI for how the documents were withheld. He indicated if he had withheld documents in this manner he would have been prosecuted for obstruction of justice. (Exhibit 7 to Separately Bound Exhibits).

(2) One of the critical 302's which provided support for the proposition that someone besides Tim McVeigh masterminded the bombing was withheld from two entirely separate field offices (Exhibits 16 and 17). No explanation has been provided how the field offices could make the same mistake on the same important 302.

(3) Another 10 page 302 which dealt exclusively with information concerning the Oklahoma City bombing was not provided to the defense until its author, former Special

Agent Ricardo Ojeda, indicated publicly he believed the document had been withheld from the defense. The government's explanation is that the investigation had been requested in another case. Mr. Ojeda disputes this claim. *See* Exhibit "A" to the Supplement to Motion for Stay, (the withheld 302), and Exhibit "A" to Timothy McVeigh's Reply (the Affidavit from Ricardo Ojeda). This demonstrates a mechanism by which the FBI could place important 302's in other case files and avoid production in Mr. McVeigh's case.

(4) In its brief in response to Mr. McVeigh's motion for a stay, the government indicated the explanation for absence of 302's or inserts concerning particular suspects the FBI must have investigated, was the fact that there were other means of documenting agency action. Specifically, the government referenced inter-agency communications. This creates the very real possibility that *Brady* material was withheld by failure to place witness statements in the form of FBI 302's or inserts.

(5) The government continues to refuse to turn over the inter-agency communications directing the field offices to provide the discovery material in the bombing case. If these directives were as straight forward as the government suggests, there is no reason not to provide them.

(6) Finally, the FBI has demonstrated its complete lack of good faith by failure to disclose to prosecutors that evidence had been withheld in violation of the reciprocal discovery agreement. The government admits the FBI became aware of this problem in

January 2001. The FBI did not inform counsel for the government until May 8, 2001, just eight days before the originally scheduled date of execution.

## IV. This Court Should Stay Mr. McVeigh's Execution.

In *Barefoot v. Estelle*, 463 U.S. 880 (1983), the Court established the standard under which stays of execution should be granted by an appellate court. In a footnote, the Court said,

> The following quotation cogently sums up this [stay] standard:
>
> "In requiring 'a question of substance,' or 'a substantial showing of the denial of [a] federal right,' obviously the petitioner need not show that he should prevail on the merits. He has already failed in that endeavor. Rather, he must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are 'adequate to deserve encouragement to proceed further.'" *Gordon v. Willis*, 516 F.Supp. 911, 913 (N.D.Ga. 1980) (quoting *United States ex rel. Jones v. Richmond*, 245 F.2d 234 (2d Cir.), *cert. denied*, 355 U.S. 846 (1957).

463 U.S. at 893.

There can be no confidence that the FBI has not continued to suppress information concerning the involvement of other people in the Oklahoma City bombing. The reasons we presented to the District Court for believing that there has been a fraud on the court may not yet make out that fraud to an evidentiary standard. However, we have done what the District Court said that we needed to do and then failed to address. We have "presented a

reasonable basis for a belief that given time to pursue the matter counsel contends in good faith supports a claim of fraud on the Court [counsel will be able to demonstrate a fraud on the court]." Order, at 5 (line 20) - 6 (line 1). In these circumstances, we have presented questions that are "'adequate to deserve encouragement to proceed further.'" *Barefoot v. Estelle*. The Court should stay Mr. McVeigh's execution.

Respectfully submitted,


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By: _____

ATTORNEYS FOR TIMOTHY McVEIGH

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing instrument, BRIEF IN SUPPORT OF EMERGENCY APPLICATION FOR STAY OF EXECUTION, was hand delivered on the _____ day of June, 2001, to the following:

Sean Connelly
Special Attorney to the
U.S. Attorney General
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_____
Robert Nigh, Jr.